IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.8257 of 2007

The Textile Committee ..Petitioner

vs.

1. Mr.Gautam Khandelwal
and another ..Respondents

Shri B.A.Desai, Sr.Advocate with Shri L.S.Shetty Shri A.M.Sethna, Shri M.S.Bharadwaj and Ms.Bharati Mahant i/b M/s L.S.Shashtri and Associates for petitioner.

Smt.Ranjana Parekh for respondents.

CORAM: S.C.DHARMADHIARI J.
11th December, 2007

P.C.

1. This is a petition challenging the order of amendment of the plaint permitted and allowed by the Trial Court so also confirmed by the revisional Court.

2. It is during the course of proceedings that admittedly the written statement of the petitioners was amended to introduce the plea with regard to the ownership of the respondents in the subject immovable property. Upon that plea being allowed as and by way of caution, the plaintiffs sought leave to amend the plaint. The original plaint proceeds on the basis that the plaintiffs are the present trustees of Gautam Trust and Preeti Trust and the Trust had

inducted the present petitioners as their monthly tenant. Since the plea was permitted to be introduced in the written statement and there is now denial of the title of the present plaintiffs/respondents herein on record that the application for amendment was made. After para 4 of the plaint, the following plea was sought to be incorporated.

> "Subsequent to the commencement of the trial of the suit, defendants amended their written statement on 20th November, 2006 denying plaintiffs' title. Plaintiffs submit that the defendants were put in possession of the suit premises by the plaintiff Trusts. Agreement dated 26th September, 1973 whereby defendants were put in possession is between defendants and plaintiffs Trusts. Plaintiffs Trusts has been the owner and continues to be the owner of the suit premises since inception of defendants knowledge. Defendants have dealt with the plaintiffs Trust as the owner and their landlord. Plaintiffs shall crave leave to refer to and rely on the correspondence between the parties. I

submit that the defendants are estopped from challenging the plaintiffs title as the landlords in respect of the suit premises."

3. This amendment has been allowed and that is how the Trial Court's order was subjected to the revision at the instance of the present petitioners. As observed above the revision application was also rejected.

4. Shri Desai, learned Senior counsel appearing for the petitioners/original defendants, strenuously submits that the amendment introduces altogether new cause of action. Such a course is impermissible and, therefore, the impugned orders are ex facie bad in law. He places reliance upon the decision of the Hon'ble Supreme Court reported in 2007(5) Mh.L.J. 593 (Usha Balalsaheb Swami and others Vs.Kiran Appasao Swami and others).

5. Shri Desai in all fairness also invites my attention to the Privy Council's decision which has been referred to with approval by the Hon'ble Supreme Court in the said decision on the question of amendment of the written statements.

6. Before me the case is different in as much as it is a case of amendment of the plaint. However, there does not appear to be inconsistency in the amended pleas and original cause of action nor there is any change. In the present case, the suit is for eviction and possession of an immovable property of which the petitioners are in possession. Since the petitioners amended the written statement pending trial and denied the respondents/plaintiffs' title, the respondents'/plaitniffs' in addition to the assertions already made in para 1 of the plaint elaborated by amending and introducing para 4a in the plaint. Thus, in the amended plaint and amended plea there does not appear to be inconsistency. In fact the emphasis is that all through out the respondents were recognised as owners of the petitioners and now they are estopped from challenging their title.

7. To my mind, the said amendment could have been permitted by applying liberal principles on which reliance is placed by Shri Desai. Neither is there any change in the cause of action nor the present petitioners are taken by surprise.

The Trial Court now has been obliged to go into the merits of the amended plea and the same will have to be considered in the light of the material placed during the course of trial. Merely because the plaint has been allowed to be amended does not mean that the petitioners/defendants are precluded from raising appropriate pleas with regard to the title of the respondents and all such pleas and their case would be gone into by the Trial Court irrespective of the order permitting amendment. Such pleas would be decided in accordance with law. In the light of this clarification, there is no need to interfere with the orders under challenge which are even otherwise not suffering from any illegality or perversity calling for my interference under Article 227 of the Constitution of India. Petition is dismissed.

(S.C.DHARMADHIKARI J.)